

Short Title: GSC Modernize Partition Laws.

A BILL TO BE ENTITLED
AN ACT TO MODERNIZE THE STATUTES ON PARTITION OF PROPERTY AND TO
MAKE TECHNICAL, CONFORMING, AND MODERNIZING AMENDMENTS TO THE
ELECTIVE LIFE ESTATE STATUTE, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. RECODIFY AND MODERNIZE PARTITION OF PROPERTY STATUTES

SECTION 1.(a) The General Statutes is amended by adding a new Chapter 46A to
be entitled "Partition." The new Chapter shall be divided into three articles, as follows:

- (1) "Article 1. General Provisions."
- (2) "Article 2. Partition of Real Property."
- (3) "Article 3. Partition of Personal Property."

SECTION 1.(b) Article 2 of Chapter 46A of the General Statutes, as created by
subsection (a) of this section, shall be divided into three parts, as follows:

- (1) "Part 1. General Provisions."
- (2) "Part 2. Actual Partition."
- (3) "Part 3. Partition Sale."

SECTION 2.(a) G.S. 46-1 (Partition is a special proceeding) is recodified as
G.S. 46A-1 in Article 1 of Chapter 46A of the General Statutes, as created by Section 1 of this
act.

SECTION 2.(b) G.S. 46-2 (Venue in partition) is recodified as G.S. 46A-20 in Part
1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(c) G.S. 46-2.1 (Summons) is recodified as G.S. 46A-2 in Article 1 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(d) G.S. 46-3 (Petition by cotenant or personal representative of cotenant) is recodified as G.S. 46A-21 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(e) G.S. 46-3.1 (Court's authority to make orders pending final determination of proceeding) is recodified as G.S. 46A-28 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(f) G.S. 46-4 (Surface and minerals in separate owners; partitions distinct) is recodified as G.S. 46A-24 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(g) G.S. 46-5 (Petition by judgment creditor of cotenant; assignment of homestead) is recodified as G.S. 46A-23 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(h) G.S. 46-6 (Unknown or unlocatable parties; summons, notice, and representation) is recodified as G.S. 46A-22 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(i) G.S. 46-7 (Commissioners appointed) is recodified as G.S. 46A-50(a) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(j) G.S. 46-7.1 (Compensation of commissioners) is recodified as G.S. 46A-50(b) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(k) G.S. 46-8 (Oath of commissioners) is recodified as G.S. 46A-50(c) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(l) G.S. 46-9 (Delay or neglect of commissioner penalized) is recodified as G.S. 46A-50(d) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(m) G.S. 46-10 (Commissioners to meet and make partition; equalizing shares) is recodified as G.S. 46A-51(a) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(n) G.S. 46-11 (Owerty to bear interest) is recodified as G.S. 46A-51(b) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(o) G.S. 46-12 (Owerty from infant's share due at majority) is recodified as G.S. 46A-51(c) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(p) G.S. 46-13 (Partition where shareowners unknown or title disputed; allotment of shares in common) is recodified as G.S. 46A-52 in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(q) G.S. 46-14 (Judgments in partition of remainders binding on parties thereto) is recodified as G.S. 46A-25 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(r) G.S. 46-16 (Partial partition; balance sold or left in common) is recodified as G.S. 46A-26 in Part 1 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(s) G.S. 46-17 (Report of commissioners; contents; filing) is recodified as G.S. 46A-55(a) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(t) G.S. 46-17.1 (Dedication of streets) is recodified as G.S. 46A-54 in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

1 **SECTION 2.(u)** G.S. 46-18 (Map embodying survey to accompany report) is
2 recodified as G.S. 46A-55(b) in Part 2 of Article 2 of Chapter 46A of the General Statutes, as
3 created by Section 1 of this act.

4 **SECTION 2.(v)** G.S. 46-19 (Confirmation and impeachment of report) is recodified
5 as G.S. 46A-56 in Part 2 of Article 2 of Chapter 46A of the General Statutes, as created by Section
6 1 of this act.

7 **SECTION 2.(w)** G.S. 46-20 (Report and confirmation enrolled and registered;
8 effect; probate) is recodified as G.S. 46A-57 in Part 2 of Article 2 of Chapter 46A of the General
9 Statutes, as created by Section 1 of this act.

10 **SECTION 2.(x)** G.S. 46-21 (Clerk to docket owelty charges; no release of land and
11 no lien) is recodified as G.S. 46A-58 in Part 2 of Article 2 of Chapter 46A of the General Statutes,
12 as created by Section 1 of this act.

13 **SECTION 2.(y)** G.S. 46-22 (Sale in lieu of partition) is recodified as G.S. 46A-75
14 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

15 **SECTION 2.(z)** G.S. 46-22.1 (Mediation) is recodified as G.S. 46A-29 in Part 1 of
16 Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

17 **SECTION 2.(aa)** G.S. 46-23 (Remainder or reversion sold for partition; outstanding
18 life estate) is recodified as G.S. 46A-79 in Part 3 of Article 2 of Chapter 46A of the General
19 Statutes, as created by Section 1 of this act.

20 **SECTION 2.(bb)** G.S. 46-24 (Life tenant as party; valuation of life estate) is
21 recodified as G.S. 46A-78 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created
22 by Section 1 of this act.

23 **SECTION 2.(cc)** G.S. 46-25 (Sale of standing timber on partition; valuation of life
24 estate) is recodified as G.S. 46A-80 in Part 3 of Article 2 of Chapter 46A of the General Statutes,
25 as created by Section 1 of this act.

SECTION 2.(dd) G.S. 46-26 (Sale of mineral interests on partition) is recodified as G.S. 46A-81 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(ee) G.S. 46-27 (Sale of land required for public use on cotenant's petition) is recodified as G.S. 46A-82 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(ff) Subsections (a) and (b) of G.S. 46-28 (Sale procedure) are recodified as subsections (a) and (d), respectively, of G.S. 46A-76 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(gg) Subsection (c) of G.S. 46-28 (Sale procedure) is recodified as G.S. 46A-77 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(hh) Subsections (a), (b), (c), (d), and (e) of G.S. 46-28.1 (Petition for revocation of confirmation order) are recodified as subsections (a), (c), (d), (e), and (f), respectively, of G.S. 46A-83 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(ii) Subsection (d1) of G.S. 46-28.1 (Petition for revocation of confirmation order) is recodified as G.S. 46A-84 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(jj) Subsection (f) of G.S. 46-28.1 (Petition for revocation of confirmation order) is recodified as subsection (a) of G.S. 46A-85 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

SECTION 2.(kk) G.S. 46-28.2 (When bidder may purchase) is recodified as G.S. 46A-85(b) in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by Section 1 of this act.

1 **SECTION 2.(ll)** G.S. 46-30 (Deed to purchaser; effect of deed) is recodified as
2 G.S. 46A-85(c) in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by
3 Section 1 of this act.

4 **SECTION 2.(mm)** G.S. 46-31 (Clerk not to appoint self, assistant or deputy to sell
5 real property) is recodified as G.S. 46A-76(c) in Part 3 of Article 2 of Chapter 46A of the General
6 Statutes, as created by Section 1 of this act.

7 **SECTION 2.(nn)** G.S. 46-33 (Shares in proceeds to cotenants secured) is recodified
8 as G.S. 46A-85(d) in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created by
9 Section 1 of this act.

10 **SECTION 2.(oo)** G.S. 46-34 (Shares to persons unknown or not sui juris secured) is
11 recodified as G.S. 46A-86 in Part 3 of Article 2 of Chapter 46A of the General Statutes, as created
12 by Section 1 of this act.

13 **SECTION 2.(pp)** G.S. 46-42 (Personal property may be partitioned; commissioners
14 appointed) is recodified as G.S. 46A-100 in Article 3 of Chapter 46A of the General Statutes, as
15 created by Section 1 of this act.

16 **SECTION 2.(qq)** G.S. 46-43 (Report of commissioners) is recodified as
17 G.S. 46A-101(b) in Article 3 of Chapter 46A of the General Statutes, as created by Section 1 of
18 this act.

19 **SECTION 2.(rr)** G.S. 46-43.1 (Confirmation; impeachment) is recodified as
20 G.S. 46A-101(c) in Article 3 of Chapter 46A of the General Statutes, as created by Section 1 of
21 this act.

22 **SECTION 2.(ss)** G.S. 46-44 (Sale of personal property on partition) is recodified as
23 G.S. 46A-102 in Article 3 of Chapter 46A of the General Statutes, as created by Section 1 of this
24 act.

SECTION 3. Chapter 46A of the General Statutes, as created by Section 1 of this act and as amended by Section 2 of this act, reads as rewritten:

"Chapter 46A.

"Partition.

"Article 1.

"General Provisions.

"§ 46A-1. Partition is a special proceeding.

~~Partition under this Chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein.~~

A partition of property under this Chapter is by special proceeding, and, except as modified in this Chapter, its procedure is provided in Subchapter XII of Chapter 1 of the General Statutes.

"§ 46A-2. ~~Summons.~~Summons; notice included in petition.

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) ~~Written notice shall be included in the petition~~The petition shall include written notice in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) ~~That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.~~
That pursuant to G.S. 46A-3, the court may order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.

"§ 46A-3. Attorneys' fees.

(a) In proceedings to partition property under this Chapter, the court shall allocate among all the cotenants of the property those reasonable attorneys' fees incurred by any cotenant for the common benefit of all the cotenants, unless a cotenant shows that doing so would be inequitable. The allocation shall be according to each cotenant's interest in the property.

(b) The attorneys' fees described in subsection (a) of this section do not include attorneys' fees incurred in disputing the method of partition or the division of the proceeds of a partition sale. Reasonable attorneys' fees incurred by a cotenant in disputing an issue described in this subsection shall be allocated by the court among those cotenants determined by the court to be aligned with the cotenant on that issue. The allocation shall be according to each aligned cotenant's interest in the property relative to the total interest of all the aligned cotenants in the property.

(c) The court has discretion to allocate among the parties reasonable attorneys' fees that are not described in subsections (a) or (b) of this section.

"Article 2.

"Partition of Real Property.

"Part 1.

"General Provisions.

"§ 46A-20. Venue in partition.

~~The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one county, or consists of several tracts lying in different counties, proceedings may be instituted in either of the counties in which a part of the land is situated, and the court of such county wherein the proceedings for partition are first brought shall have jurisdiction to proceed to a final disposition of said proceedings, to the same extent as if all of said land was situate in the county where the proceedings were instituted.~~

A proceeding to partition real property shall be commenced in the county where the property is located. If the property, whether consisting of one or more tracts, is located in more than one county, the proceeding may be commenced in any of the counties where any part of the property is located; in this case, the petitioner shall file a notice of lis pendens in each of the other counties.

"§ 46A-21. Petition by cotenant or personal representative of ~~cotenant~~; necessary and proper parties; joinder of spouses.

~~One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent's real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court.~~

(a) Any person claiming real property as a tenant in common or joint tenant may petition to partition the property in superior court. The personal representative of a deceased tenant in common or deceased joint tenant may also petition to partition the property as part of a petition to sell the deceased cotenant's interest for the payment of debts and other claims against the deceased cotenant's estate as provided in G.S. 28A-17-3.

(b) The petitioner shall serve and join all tenants in common and joint tenants of the property. The petitioner may serve and join any other person with an interest in the property, any lessee of the property, and any holder of a lien, mortgage, or deed of trust on the property.

(c) The petitioner is not required to serve or join spouses of cotenants of the real property unless the spouse is also a cotenant.

"§ 46A-22. Unknown or unlocatable parties; summons, notice, and representation.

~~If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof,~~

1 ~~with the order of the court thereon, in one or more newspapers to be designated in the order. If,~~
2 at the time of or subsequent to the filing of the petition, the petitioner shows by affidavit or
3 otherwise that the petitioner cannot after due diligence ascertain the name or location of a person
4 that the petitioner is required to, or chooses to, serve under G.S. 46A-21(b), the court shall
5 authorize service by publication under G.S. 1A-1, Rule 4. The notice by publication shall include
6 a description of the property ~~which~~ that includes the street address, if any, or other common
7 designation for the property, if any, and may include the legal description of the property.

8 (b) ~~Before or after such general notice by publication if any person interested in the~~
9 ~~premises and entitled to notice fails to appear, the court shall appoint some disinterested person~~
10 ~~to represent the owner of any shares in the property to be divided, the ownership of which is~~
11 ~~unknown or unlocatable and unrepresented.~~ Before or after the notice by publication, the court
12 shall appoint a guardian ad litem under G.S. 1A-1, Rule 17, to represent any unknown or
13 unlocatable person that the petitioner is required to, or chooses to, serve under G.S. 46A-21(b).

14 **"§ 46A-23. Petition by judgment creditor of ~~cotenant~~; assignment of homestead. cotenant.**

15 ~~When any person owns a judgment duly docketed in the superior court of a county wherein~~
16 ~~the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint~~
17 ~~tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the~~
18 ~~land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before~~
19 ~~the clerk of the court of the county wherein the land lies a special proceeding for partition of the~~
20 ~~land between the tenants in common, making the judgment debtor, the other tenants in common~~
21 ~~and all other interested persons parties to the proceeding by summons. The proceeding shall then~~
22 ~~be in all other respects conducted as other special proceedings for the partition of land between~~
23 ~~tenants in common. Upon the actual partition of the land the judgment creditor may sue out~~
24 ~~execution on his judgment, as allowed by law, and have the homestead of the judgment debtor~~
25 ~~allotted to him and sell the excess, as in other cases where the homestead is allotted under~~

1 ~~execution. The remedy provided for in this section shall not deprive the judgment creditor of any~~
2 ~~other remedy in law or in equity which he may have for the enforcement of his judgment lien.~~

3 (a) If a judgment debtor has a personal liability on a judgment docketed in the superior
4 court of a county where the judgment debtor owns real property as a tenant in common or joint
5 tenant, the judgment creditor may petition for an actual partition of the property. If the court
6 apportions a share of the property to the judgment debtor, the judgment creditor may seek to
7 execute the judgment against the judgment debtor's share by (i) setting aside the judgment
8 debtor's homestead in the share, as determined according to Article X of the North Carolina
9 Constitution and Article 16 of Chapter 1C of the General Statutes, and (ii) selling the remaining
10 part of the share.

11 (b) The remedy provided in this section does not deprive a judgment creditor of any other
12 remedy in law or equity to enforce a judgment lien.

13 **"§ 46A-24. Surface and ~~minerals~~ oil, gas, or mineral interests in separate owners; partitions**
14 **distinct.**

15 ~~When the title to the mineral interests in any land has become separated from the surface in~~
16 ~~ownership, the tenants in common or joint tenants of such mineral interests may have partition~~
17 ~~of the same, distinct from the surface, and without joining as parties the owner or owners of the~~
18 ~~surface; and the tenants in common or joint tenants of the surface may have partition of the same,~~
19 ~~in manner provided by law, distinct from the mineral interest and without joining as parties the~~
20 ~~owner or owners of the mineral interest. In all instances where the mineral interests and surface~~
21 ~~interest have thus become separated in ownership, the owner or owners of the mineral interests~~
22 ~~shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners~~
23 ~~of the surface interest be compelled to join in a partition of the mineral interest, nor shall the~~
24 ~~rights of either owner be prejudiced by a partition of the other interests.~~

When title to the oil, gas, or mineral interests in real property has been separated in ownership from the title to the surface of the property, a tenant in common or joint tenant of the oil, gas, or mineral interests may partition the oil, gas, or mineral interests, distinct from the surface, without joining the owner of the surface. Similarly, a tenant in common or joint tenant of the surface of the property may partition the surface, distinct from the oil, gas, or mineral interests, without joining the owner of the oil, gas, or mineral interests. An owner of the oil, gas, or mineral interests is not required to join a partition of the surface of the property, and an owner of the surface of the property is not required to join a partition of the oil, gas, or mineral interests. The rights of either owner shall not be prejudiced by a partition of the other interests.

"§ 46A-25. Judgments in partition of remainders binding on parties thereto. Partition of real property subject to a contingent future interest; requirements.

~~Where land is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be valid and binding upon all parties thereto and upon all other persons not then in being.~~

When real property is subject to a contingent future interest, any judgment partitioning the property is valid and binding upon all persons having an interest in the property, whether or not in being, if all of the following requirements are met:

(1) The following persons are parties:

a. Persons with a present interest or a vested future interest.

b. Persons in being with a contingent future interest and that would have a present interest if the contingency had occurred at the time the proceeding was commenced.

c. Persons not in being with a contingent future interest.

(2) The following parties are represented by a guardian ad litem appointed under G.S. 1A-1, Rule 17:

a. Unborn individuals.

b. Parties not in being.

c. Parties who are minors or incompetent adults and who do not have a guardian of the estate or general guardian.

d. Unknown or unlocatable parties.

"§ 46A-26. Partial partition; balance sold or left in common. Methods of partition.

~~In all proceedings under this Chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy.~~

In a partition proceeding under this Article, the court shall order one of the following methods of partitioning the real property:

(1) Actual partition under Part 2 of this Article.

(2) Partition sale under Part 3 of this Article so long as the requirements of that Part are satisfied.

(3) Actual partition of part of the property and a partition sale of the remaining part.

(4) Partition of part of the property, whether by actual partition or by partition sale, and order that the remaining part continue to be held in cotenancy. The

1 court, however, shall not order a cotenant to continue to hold property in
2 cotenancy over the cotenant's objection.

3 **"§ 46A-27. Carrying costs, including property taxes; improvements; right to contribution.**

4 (a) Right to Contribution. – A cotenant has a right to contribution from the other
5 cotenants for the cotenant's payment of the real property's carrying costs and for the lesser of the
6 following:

- 7 (1) The value added to the real property by the cotenant's improvements as of the
8 date of the commencement of the proceeding.
9 (2) The actual costs of the cotenant's improvements.

10 (b) Procedure. – In the case of an actual partition, a cotenant may on application assert
11 the cotenant's right to contribution at any time before the commissioners file their report. In the
12 case of a partition sale, a cotenant may on application assert the right at any time during the
13 partition proceeding.

14 (c) Property Taxes. – A cotenant's right to contribution for property taxes under this
15 section is limited to the amount of property taxes paid by the cotenant during the 10 years
16 preceding the filing of the partition petition, plus interest at the legal rate under G.S. 24-1.

17 (d) Scope. – Nothing in this section affects the rights of cotenants outside a real property
18 partition proceeding initiated under this Chapter.

19 (e) Carrying Costs Defined. – For purposes of this section, "carrying costs" means the
20 actual costs of preserving the value of and the cotenants' interests in the real property, including
21 property taxes, homeowner's insurance, repairs, and payments for a loan to acquire the real
22 property.

23 **"§ 46A-28. Court's authority to make orders ~~pending~~ before final determination of**
24 **~~proceeding~~ proceeding; notice and hearing.**

~~Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition land, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, and to include the appointment of receivers pursuant to G.S. 1-502(6).~~

(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of receivers pursuant to G.S. 1-502(6), and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

(b) A party making a written application under subsection (a) of this section shall serve a copy of the application on all other parties and any other person the court may require. The court shall schedule a hearing on the application, if, within 10 days of being served, a person files a response in opposition to the application or requests a hearing. If no person files a response or requests a hearing within 10 days of being served, the court may decide the application without a hearing.

"§ 46A-29. Mediation.

~~(a) Persons interested in the premises may agree at anytime to mediation of a partition. Parties interested in the real property may agree at any time during the proceeding to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts. G.S. 7A-38.1 and G.S. 7A-38.3B apply to a mediation under this section.~~

(b) When a partition sale is requested, the ~~court or the clerk~~ court, on its own motion or
a motion of a party, may order mediation before considering whether to order a sale. The
provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply.

"Part 2.

"Actual Partition.

"§ 46A-50. Commissioners appointed; compensation; oath; delay or neglect.

(a) ~~The superior court shall appoint three disinterested commissioners to divide and~~
~~apportion such real estate, or so much thereof as the court may deem best, among the several~~
~~tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in~~
~~more than one county, then the court may appoint such additional commissioners as it may deem~~
~~necessary from counties where the land lies other than the county where the proceedings are~~
~~instituted.~~ Appointment. – The superior court shall appoint three disinterested commissioners to
apportion the real property to be partitioned among the cotenants. If the property to be partitioned
is located in more than one county, the court may appoint additional commissioners if necessary
from counties where the property is located other than the county where the proceeding is
commenced.

(b) ~~The clerk of the superior court shall fix the compensation of commissioners for the~~
~~partition or division of lands according to the provisions of G.S. 1-408.~~ Compensation. – The
clerk of the superior court shall fix the compensation of commissioners for the partition of real
property according to G.S. 1-408.

(c) ~~The commissioners shall be sworn by a magistrate, the sheriff or any deputy sheriff~~
~~of the county, or any other person authorized to administer oaths, to do justice among the tenants~~
~~in common in respect to such partition, according to their best skill and ability.~~ Oath. – The
commissioners shall be sworn according to Chapter 11 of the General Statutes.

(d) ~~If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars (\$50.00), to be recovered by the petitioner.~~ Delay or Neglect. – If, after accepting the commission, any of the commissioners unreasonably delays or neglects to perform his or her duties as a commissioner, the court may remove the commissioner and appoint a new commissioner.

"§ 46A-51. Commissioners to inspect and partition real property; apportioning shares; charging owelty on shares of disproportionately greater value.

(a) ~~The commissioners, who shall be summoned by the sheriff, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition.~~ Apportioning Shares; Charging Owelty on Shares. – The commissioners together shall inspect the real property and partition it among the cotenants by apportioning it into shares proportionate in value as nearly as possible to the cotenants' interests in the property. To the extent the commissioners find it necessary to make an equitable partition, they may do any of the following:

(1) Apportion the property into shares disproportionate in value to the cotenants' interests in the property and charge owelty on the shares of disproportionately greater value in the amounts of money necessary to redress the disproportion, to be paid to the shares of disproportionately lesser value.

(2) Adjust the shares or any owelty charged on the shares to account for a court order for contribution under G.S. 46A-27 or any other court order.

(b) ~~The sums of money due from the more valuable dividends shall bear interest until~~
~~paid.~~ Interest on Owelty. – Owelty shall bear interest at the legal rate under G.S. 24-1 until paid.

(c) ~~When a minor to whom a more valuable dividend shall fall is charged with the~~
~~payment of any sum, the money shall not be payable until such minor arrives at the age of 18~~
~~years, but the general guardian, if there be one, must pay such sum whenever assets shall come~~
~~into his hands, and in case the general guardian has assets which he did not so apply, he shall pay~~
~~out of his own proper estate any interest that may have accrued in consequence of such failure.~~
Minor's Share. – If a share charged with owelty is apportioned to a minor, the money shall not
be payable until the minor becomes 18 years old. If the minor has a guardian of the estate or
general guardian, however, the guardian shall pay the money when the guardian receives assets
belonging to the minor, other than the share, that may be used for that purpose. If the guardian
fails to comply with this subsection, the guardian shall be personally liable for any interest that
accrued due to the failure.

"§ 46A-52. Partition where shareowners unknown or title disputed; allotment of shares in
common. Partition where cotenants unknown or title disputed.

~~If there are any of the tenants in common, or joint tenants, whose names are not known or~~
~~whose title is in dispute, the share or shares of such persons shall be set off together as one parcel.~~
~~If, in any partition proceeding, two or more appear as defendants claiming the same share of the~~
~~premises to be divided, or if any part of the share claimed by the petitioner is disputed by any~~
~~defendant or defendants, it shall not be necessary to decide on their respective claims before the~~
~~court shall order the partition or sale to be made, but the partition or sale shall be made, and the~~
~~controversy between the contesting parties may be afterwards decided either in the same or an~~
~~independent proceeding. If two or more tenants in common, or joint tenants, by petition or~~
~~answer, request it, the commissioners may, by order of the court, allot their several shares to them~~

~~in common, as one parcel, provided such division shall not be injurious or detrimental to any
cotenant or joint tenant.~~

(a) If there are any cotenants whose names are not known or whose title is in dispute, the
shares of those cotenants shall be apportioned together as one parcel.

(b) In any partition proceeding, if two or more cotenants appear as respondents claiming
the same undivided interest in the real property to be partitioned, or if any part of the undivided
interest claimed by the petitioner is disputed by any respondent, it shall not be necessary to decide
on their respective claims before the court orders an actual partition or partition sale of the
property. The controversy between the contesting parties may be afterwards decided either in the
same or an independent proceeding.

"§ 46A-53. Apportionment of shares in common.

When requested by two or more cotenants, the commissioners may, by order of the court,
apportion their several shares to them in common, as one parcel, so long as the apportionment is
not injurious or detrimental to any cotenant.

"§ 46A-54. Dedication of streets.

~~Upon motion of any party or the commissioners appointed to make division, the clerk may
authorize the commissioners to propose and report the dedication of such portions of the land as
are necessary as a means of access to any share, or is otherwise advisable for public or private
highways, streets or alleys, and such proposal shall be acted upon by the clerk as a part of the
report and, if approved, shall constitute a dedication. No interest of a minor or other person under
disability shall be affected thereby until such dedication is approved by a judge of the superior
court.~~

Upon motion of any party or the commissioners, the clerk may authorize the commissioners
to propose in their report the dedication of portions of the real property that are necessary as a
means of access to any share or that are otherwise advisable for public or private highways,

1 streets, or alleys. The court shall consider the proposal as a part of the report and, if approved by
2 the court, it shall constitute a dedication. Only a dedication approved by a judge of the superior
3 court affects the interest of a minor, an incompetent adult, or another person under a legal
4 disability.

5 **"§ 46A-55. Report of commissioners; contents; filing and service; extension; map.**

6 (a) ~~The commissioners, within a reasonable time, not exceeding 90 days after the~~
7 ~~notification of their appointment, shall make a full and ample report of their proceedings, under~~
8 ~~the hands of any two of them, specifying therein the manner of executing their trust and~~
9 ~~describing particularly the land or parcels of land divided, and the share allotted to each tenant~~
10 ~~in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of~~
11 ~~inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the~~
12 ~~clerk of the superior court may, in the clerk's discretion, for good cause shown, extend the time~~
13 ~~for the filing of the report of said commissioners for an additional period not exceeding 60 days.~~
14 ~~This proviso shall be applicable to proceedings now pending for the partition of real property.~~
15 Report. – The commissioners shall file a report of their proceedings in the office of the clerk of
16 superior court within 90 days after the last commissioner receives a notice of appointment. The
17 report shall be signed by at least two commissioners and shall describe particularly the real
18 property or parcels of real property apportioned, the share apportioned to each cotenant in
19 severalty, and any owelty charged. The clerk of the superior court may, for good cause shown,
20 extend the time for filing the report for an additional period not exceeding 60 days. At the time
21 of filing, the commissioners shall serve a copy of the report on all the parties.

22 (b) ~~The commissioners are authorized to employ the county surveyor or, in his absence~~
23 ~~or if he be connected with the parties, some other surveyor, who shall make out a map of the~~
24 ~~premises showing the quantity, courses and distances of each share, which map shall accompany~~
25 ~~and form a part of the report of the commissioners.~~ Map. – The commissioners may employ a

disinterested surveyor to prepare a map of the real property showing the quantity, courses, and
distances of each share. If a map is prepared, the map shall accompany and form a part of the
report of the commissioners.

"§ 46A-56. Confirmation ~~and impeachment of report.~~ of report; appeal; motion for relief.

(a) If no exception to the report of the commissioners is filed within 10 ~~days,~~ days of
service of the report on all the parties, the same shall be confirmed. ~~clerk shall confirm the report.~~
~~Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or~~
~~collusion by petition in the cause: Provided, innocent purchasers for full value and without notice~~
~~shall not be affected thereby.~~

(b) If an exception to the report of commissioners is filed, the clerk shall do one of the
following:

(1) Confirm the ~~report;~~ report.

(2) Recommit the report for correction or further ~~consideration;~~ consideration.

(3) Vacate the report and direct ~~a reappraisal by the same commissioners; or the~~
same commissioners to reapportion the real property.

(4) Vacate the report, discharge the commissioners, and appoint new
commissioners to view the ~~premises and make a partition of them.~~ real
property and partition it.

(c) Appeal from the clerk to superior court of an order of confirmation of the report of
commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions
specified in subsection (b) of this section and ~~may~~ shall not adjudge a partition of the ~~land~~
property different from that made by the commissioners.

(d) After confirmation of the report, any party may seek relief from the order of
confirmation for mistake, fraud, or collusion by a motion in the proceeding. This relief, however,
shall not affect an innocent purchaser for value and without notice.

"§ 46A-57. Report and confirmation enrolled and registered; ~~effect; probate.~~ effect.

~~Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns. It shall not be necessary for the clerk of court to probate the certified papers required to be registered by this section.~~

The report of the commissioners, when confirmed, and the order of confirmation shall be enrolled and certified to the register of deeds and registered in the office of each county where the real property is located. The confirmed report shall be binding among and between the parties and the parties' heirs and assigns.

"§ 46A-58. Clerk to docket ~~owelty charges; no release of land and no lien.~~ owelty.

~~In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are allotted against which owelty is charged being marked defendants on said docket; said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; when said owelty charges are paid said entry upon the judgment docket shall be marked satisfied in like manner as judgments are cancelled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbefore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge.~~

If the court orders owelty, the clerk shall enter the owelty on the judgment docket in the same manner as judgments are entered on the docket. The clerk shall mark as plaintiffs on the judgment docket persons whose shares are to be paid owelty, and the clerk shall mark as defendants on the judgment docket persons whose shares are charged with owelty. The entry on the docket shall contain the title of the special proceeding in which the property was partitioned. When owelty is paid, the entry upon the judgment docket shall be marked satisfied in the same manner as judgments are cancelled and marked satisfied, and the clerk shall be entitled to the same fees for entering this judgment as the clerk is entitled to for docketing other judgments. The docketing of owelty under this section does not release the property from the owelty. Any judgment docketed under this section is not a lien on any property other than the property charged with owelty.

"§ 46A-59. Order for possession.

(a) An order for possession of real property apportioned pursuant to this Part, in favor of the party to which an apportionment has been made and against any party in possession at the time of application therefor, may be issued by the clerk of the superior court if all of the following apply:

- (1) No appeal from the order of confirmation of the report of commissioners has been made within the time prescribed under G.S. 1-301.2, or if an appeal has been made, the judge confirmed the report pursuant to G.S. 46A-56(c).
- (2) The report and confirmation have been duly recorded in the office of the register of deeds pursuant to G.S. 46A-57.
- (3) Ten days' notice has been given by the party applying for the order for possession to each party remaining in possession at the time application is made. The notice shall not be given until the clerk has confirmed the report of the commissioners pursuant to G.S. 46A-56.

(b) An order for possession issued pursuant to this section shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the real property and to put the party to which an apportionment has been made in possession. The order shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The party to which an apportionment has been made has the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under State law, including Chapters 42 and 44A of the General Statutes.

"Part 3.

"Partition Sale.

"§ **46A-75. Sale in lieu of actual partition.**

(a) ~~Subject to G.S. 46-22.1(b), the court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the interested parties.~~ Subject to G.S. 46A-29(b), the court shall order a sale of the real property described in the petition, or of any part of the property, under Part 3 of this Article only if it finds by a preponderance of the evidence that an actual partition of the property pursuant to Part 2 of this Article cannot be made without substantial injury to any of the parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the parties. The party seeking a sale of the property has the burden of proving substantial injury under this section.

(b) In determining whether an actual partition would cause ~~"substantial injury"~~ substantial injury to any of the ~~interested~~ parties, the court shall consider all of the following:

(1) Whether the fair market value of each cotenant's share in an actual partition of the property would be materially less than the amount each cotenant would receive from the sale of the whole.

(2) Whether an actual partition would result in material impairment of any cotenant's rights.

(3) Whether charging owelty under G.S. 46A-51 would eliminate or mitigate any substantial injury to any of the parties caused by an actual partition.

~~(b1) The court, in its discretion, shall consider the remedy of owelty where such remedy can aid in making an actual partition occur without substantial injury to the parties.~~

~~(c) The court shall make specific findings of fact and conclusions of law supporting an order of sale of the property.~~ If the court orders a partition sale, the court shall make specific findings of fact and conclusions of law supporting the order.

~~(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section.~~ As provided in G.S. 46A-52, if two or more parties claim the same undivided interest in the property, the court is not required to decide the issue before ordering a partition sale of the property.

"§ 46A-76. Sale procedure.

~~(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided herein.~~ General. – The procedure for a partition sale is the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided in this Part.

~~(b) One Commissioner Sufficient. – In a partition sale, the court is not required to appoint more than one commissioner.~~

~~(c) No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.~~ Persons Not To Be Appointed. – The clerk of

1 the superior court shall not appoint the clerk, an assistant clerk, or a deputy clerk to make a sale
2 of the real property.

3 (d) ~~The commissioners shall certify to the court that at least 20 days prior to sale a copy~~
4 ~~of the notice of sale was sent by first class mail to the last known address of all petitioners and~~
5 ~~respondents who previously were served by personal delivery or by registered or certified mail.~~
6 ~~The commissioners shall also certify to the court that at least ten days prior to any resale pursuant~~
7 ~~to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known~~
8 ~~address of all parties to the partition proceeding who have filed a written request with the court~~
9 ~~that they be given notice of any resale. An affidavit from the commissioners that copies of the~~
10 ~~notice of sale and resale were mailed to all parties entitled to notice in accordance with this~~
11 ~~section shall satisfy the certification requirement and shall also be deemed prima facie true. If~~
12 ~~after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or~~
13 ~~subsequent resale was mailed notice as required by this section prior to the date of the sale or~~
14 ~~subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a.~~
15 ~~and b.~~ Additional Requirement; Notice of Public Sale. – If the court orders a public sale, the
16 commissioner shall certify to the court that at least 20 days prior to sale, a copy of the notice of
17 sale was sent by first class mail to the last known address of all parties previously served pursuant
18 to G.S. 1A-1, Rule 4(j). An affidavit from the commissioner that copies of the notice of sale were
19 mailed to all parties entitled to notice in accordance with this section satisfies the certification
20 requirement and shall also be deemed prima facie true.

21 "**§ 46A-77. Cotenant credit.**

22 Any cotenant ~~who enters~~ entering the high bid or offer at any sale of one hundred percent
23 (100%) of the undivided interests in any parcel of real property shall receive a credit for the
24 undivided interest the cotenant already owns ~~therein~~ in the real property and shall receive a
25 corresponding reduction in the amount of the total purchase price owed after deducting the costs

1 and fees associated with the sale and ~~apportioning~~ allocating the costs and fees associated with
2 the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred
3 percent (100%) of the undivided interests in the parcel of real property sold, and the credit and
4 reduction shall be applied at the time of the closing of the cotenant's purchase of the real property.
5 ~~When jointly making the high bid or offer at the sale, two or more cotenants~~ When two or more
6 cotenants jointly make the high bid or offer at the sale, they may receive at the closing an
7 aggregate credit and reduction in the amount of the total purchase price representing the total of
8 ~~such cotenants'~~ their undivided interests in the real property. Any credits and reductions allowed
9 by this subsection shall be further adjusted to reflect any court-ordered adjustments to the ~~share(s)~~
10 share of the net sale proceeds of each of the cotenants entering the high bid or offer, including,
11 but not limited to, equitable adjustments to the ~~share(s)~~ share of the net sales proceeds due to a
12 court finding of the lack of contribution of one or more cotenants to the payment of ~~expenses of~~
13 ~~the real property~~ carrying costs or improvements of the real property under G.S. 46A-27.

14 "**§ 46A-78. Life tenant as party; valuation of life estate. Partition sale of real property**
15 **subject to a life estate.**

16 ~~In all proceedings for partition of land whereon there is a life estate, the life tenant may join~~
17 ~~in the proceeding and on a sale the interest on the value of the share of the life tenant shall be~~
18 ~~received and paid to such life tenant annually; or in lieu of such annual interest, the value of such~~
19 ~~share during the probable life of such life tenant shall be ascertained and paid out of the proceeds~~
20 ~~to such life tenant absolutely.~~

21 If the real property to be partitioned by sale is subject to a life estate, a life tenant who joins
22 in the proceeding shall receive the value of the life tenant's share calculated according to mortality
23 tables accepted by the court and paid out of the proceeds to the life tenant. The owners of the
24 remainder or reversionary interest have no interest in this payment to the life tenant.

**"§ 46A-79. ~~Remainder or reversion sold for partition; outstanding life estate.~~ Partition sale
of remainder or reversionary interest of real property.**

~~The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common or joint tenants shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate.~~

The existence of a life estate in real property does not bar a partition sale of the remainder or reversionary interest of the property, and for the purposes of partition, the tenants in common or joint tenants of the remainder or reversionary interest shall be deemed to possess the property as if no life estate existed. The partition shall not, however, interfere with the possession of the life tenant during the existence of the life tenant's estate.

"§ 46A-80. ~~Sale of standing timber on partition; timber;~~ valuation of life estate.

~~When two or more persons own, as tenants in common, joint tenants or copartners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where one or more persons own a remainder or reversionary interest in a tract of land, subject to a life estate, then in any such case in which there is standing timber upon any such land, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his or her portion of the net proceeds of sales, to be ascertained under the mortality tables established by law: Provided further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding that the cutting is in keeping with good husbandry and that no substantial injury will be done to the remainder interest.~~

(a) When two or more persons own real property with standing timber, as tenants in common, joint tenants, or partners, one or more of the persons may seek a partition sale of the timber, separate from the real property.

(b) If real property with standing timber is subject to a life estate, the life tenant or an owner of the remainder or reversionary interest, whether as a tenant in common, joint tenant, partner, or sole owner, may seek a partition sale of the timber, separate from the real property. The life tenant shall be made a party to the proceeding and is entitled to receive the life tenant's share of the proceeds, to be calculated according to mortality tables accepted by the court.

(c) An order allowing a life tenant to sell standing timber requires a finding that the cutting of the timber is in keeping with good husbandry and that no substantial injury will be done to the remainder or reversionary interest.

"§ 46A-81. Sale of mineral interests on partition. Sale of oil, gas, or mineral interests.

~~In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear.~~

In a partition of oil, gas, or mineral interests of real property, when the court determines any of the following, the court shall order a sale of the oil, gas, or mineral interests and allocate the proceeds according to the interests of the tenants in common or joint tenants:

(1) It is in the best interest of the cotenants of the oil, gas, or mineral interests to sell the interests.

(2) Actual partition of the oil, gas, or mineral interests would cause injury to some or all of the cotenants of the oil, gas, or mineral interests.

"§ 46A-82. ~~Sale of land required for public use on cotenant's petition.~~ Sale of real property required for public purposes on cotenant's petition.

~~When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B.~~

When the real property of tenants in common or joint tenants is required for public purposes, one or more cotenants, or the cotenant's guardian of the estate or general guardian, may file a petition verified by oath in the superior court of the county where the property or any part of the property is located, setting forth in the petition that the property is required for public purposes and that the cotenants' interests would be promoted by a sale of the property. If all necessary parties are before the court and the court finds the facts alleged in the petition to be true, the court shall order a sale of the property, or as much of it as may be necessary. Attorneys' fees shall be assessed in accordance with G.S. 46A-3. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. Other costs and expenses shall be assessed in accordance with G.S. 6-21.

"§ 46A-83. Petition for revocation of confirmation order.

(a) Grounds for Revocation. – Notwithstanding ~~G.S. 46-28~~ G.S. 46A-76 or any other provision of law, within 15 days of entry of the order confirming the partition sale ~~or of~~ of real property, the purchaser or any party to the partition proceeding ~~or the purchaser~~ may petition the

court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition ~~proceeding~~; proceeding, any of the following:

a. Notice of the partition was not served on the petitioner for revocation as required by ~~Rule 4 of the Rules of Civil Procedure~~; or G.S. 1A-1, Rule 4.

b. Notice of the sale was not mailed to the petitioner for revocation as required by ~~G.S. 46-28(b)~~; or G.S. 46A-76(d).

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final ~~or effective~~ during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) Effect of Notice. – A petitioner for revocation shall not prevail under sub-subdivisions (a)(2)a. or b. of this section, if the petitioner was mailed notice of the sale in accordance with G.S. 46A-76(d).

~~(c) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.~~ Service; Notice of Hearing. – The party

petitioning for revocation shall deliver a copy of the petition to all parties required to be served under G.S. 1A-1, Rule 5, and shall serve the officer or person designated to make the sale under G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make the sale, and all parties required to be served under G.S. 1A-1, Rule 5.

(d) Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence ~~that:~~ all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:

(1) A lien remains unsatisfied on the property to be ~~conveyed;~~ and conveyed.

(2) The purchaser has not agreed in writing to assume the ~~lien;~~ and lien.

(3) The lien will not be satisfied out of the proceeds of the ~~sale;~~ and sale.

(4) The existence of the lien was not disclosed in the notice of sale of the ~~property;~~
~~the court may revoke the order confirming the sale, order the withdrawal of~~
~~the purchaser's offer, and order the return of any money or security to the~~
~~purchaser tendered pursuant to the offer.~~ property.

The order of the court in revoking an order of confirmation under this section ~~may~~ shall not be introduced in any other proceeding to establish or deny the existence of a lien.

(e) Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(f) Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is ~~the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.~~ as provided under G.S. 46A-76.

"§ 46A-84. Petition for revocation based on inadequate price.

In the case of a petition brought pursuant to ~~sub-subdivision (a)(2)c. of this section,~~ G.S. 46A-83(a)(2)c., and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as ~~they may agree.~~ determined by the court. Before ruling on the petition brought pursuant to ~~sub-subdivision (a)(2)c. of this section,~~ G.S. 46A-83(a)(2)c., the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to ~~such the~~ purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

"§ 46A-85. Order becoming final; appeal; purchase of property.

(a) Order Becoming Final; Appeal. – An order confirming the partition sale of real property becomes final ~~and effective~~ 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition ~~of~~ sale of real property within 10 days of the order becoming ~~final and effective.~~ final.

(b) Purchase of Property. – After the order of confirmation becomes ~~final and effective,~~
final, the successful bidder may immediately purchase the property.

(c) Effect of Deed. – The deed of the officer or person designated to make ~~such the~~ sale
shall convey to the purchaser such title and estate in the property as the ~~tenants in common, or~~
~~joint tenants, cotenants~~ and all other parties to the proceeding had ~~therein.~~ in the property.

(d) Sale Proceeds. – ~~At the time that the order of confirmation becomes final, the court~~
~~shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the~~
~~proceeds of sale.~~ Upon receipt of the sale proceeds by either the court or the commissioner, the
court shall secure to each cotenant the cotenant's ratable share in severalty of the proceeds of
sale. If the ratable share due to each cotenant has not yet been determined by the court, the court
shall set the matter for hearing on the court's own motion or upon motion of a party or
commissioner.

"§ 46A-86. ~~Shares to persons unknown or not sui juris secured.~~ Sale proceeds belonging to
certain parties.

~~When a sale is made under this Chapter, and any party to the proceedings be an infant, non~~
~~compos mentis, imprisoned, or beyond the limits of the State, or when the name of any tenant in~~
~~common is not known, it is the duty of the court to decree the share of such party, in the proceeds~~
~~of sale, to be so invested or settled that the same may be secured to such party or his real~~
~~representative.~~

(a) Minor; Incompetent Adult. – When real property is sold under this Chapter and a
party to the proceeding is a minor or an incompetent adult, the court shall take appropriate steps
to secure the proceeds for the benefit of the party, including any of the following:

(1) For proceeds up to the allowable amounts in G.S. 7A-111, receive, administer,
and disburse the proceeds pursuant to that section.

(2) Order the proceeds disbursed to any of the following:

- a. A guardian of the estate or general guardian under Chapter 35A of the General Statutes.
- b. An agent under Chapter 32C of the General Statutes.
- c. In the case of a minor, a custodian under Chapter 33A of the General Statutes.
- d. A custodial trust under Chapter 33B of the General Statutes.
- e. A trust under Chapter 36C of the General Statutes.

(b) Certain Other Parties. – When a sale is made under this Chapter, the court shall invest or deposit under G.S. 7A-112 and G.S. 7A-112.1 proceeds belonging to the following parties:

(1) A party who is imprisoned, if the proceeds cannot be disbursed to, or at the direction of, the party.

(2) An unknown or unlocatable cotenant.

A party may seek disbursement of these proceeds by filing a motion in the proceeding. If the party shows that the proceeds belong to the party, the court shall order that the proceeds be disbursed to the party.

"Article 3.

"Partition of Personal Property.

"§ 46A-100. Personal property may be ~~partitioned; commissioners appointed.~~ partitioned.

~~When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants.~~

A tenant in common or joint tenant of personal property may file a petition in superior court to partition the property.

"§ 46A-101. Commissioners appointed; filing and service of report; confirmation; motion for relief.

(a) Appointment. – If the court determines that the petitioner is entitled to relief, the court shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to partition the personal property in shares that are as nearly proportionate in value as possible to the interests of the cotenants.

(b) ~~The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made.~~ Report. – The commissioners shall file a written report of their proceedings in the court, signed by any two of them, within five days after the actual partition. At the time of filing, the commissioners shall serve a copy of the report on all the parties.

(c) ~~If no exception to the report of the commissioners making partition is filed within 10 days the report shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceeding for mistake, fraud or collusion, by petition in the cause, but innocent purchasers for full value and without notice shall not be affected thereby.~~ Confirmation. – If no party files an exception to the commissioners' report within 10 days of service of the report on all the parties, the court shall confirm the report.

(d) Motion for Relief. – After confirmation of the report, any party may seek relief from the order of confirmation for mistake, fraud, or collusion by a motion in the proceeding. This relief, however, shall not affect an innocent purchaser for value and without notice.

"§ 46A-102. Sale of personal property on partition. Partition sale of personal property.

~~If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is~~

~~deemed necessary, the court shall order a sale to be made as provided in Article 29A of Chapter
1 of the General Statutes.~~

(a) If the court determines that an actual partition of personal property would injure some
of the parties and that a partition sale is necessary, the court shall order a sale to be made as
provided in Article 29A of Chapter 1 of the General Statutes. In a partition sale, the court is not
required to appoint more than one commissioner.

(b) G.S. 46A-86 applies to sale proceeds under this section."

PART II. CONFORMING PROCEDURAL CHANGES

SECTION 4. G.S. 1-301.2 reads as rewritten:

"§ 1-301.2. Transfer or appeal of special proceedings; exceptions.

(a) Applicability. – This section applies to special proceedings heard by the clerk of
superior court in the exercise of the judicial powers of that office. If this section conflicts with a
specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an
issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a
special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall
transfer the proceeding to the appropriate court. In court, the proceeding is subject to the
provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. – Whenever a special proceeding is transferred to a court
pursuant to subsection (b) of this section, the judge may hear and determine all matters in
controversy in the special proceeding, unless it appears to the judge that justice would be more
efficiently administered by the judge's disposing of only the matter leading to the transfer and
remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. – If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. – ~~Except as provided in G.S. 46-28.1(f), a~~ A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Under G.S. 46A-85(a), however, a party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. – Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings and Proceedings to Permit Sterilization for Medical Necessity. –

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a ward with a mental illness or intellectual disability under G.S. 35A-1245, shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A of the General Statutes to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 of the General Statutes to the extent that the provisions of that Article conflict with this section.

(h) Exception for Partition Proceedings. – Notwithstanding the provisions of subsection (b) of this section, the issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section."

SECTION 5. G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in

partition proceedings under ~~Chapter 46~~ Chapter 46A of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 6. G.S. 1-502 reads as rewritten:

"§ 1-502. In what cases appointed.

A receiver may be appointed –

...

(6) In cases involving partition of real property, pursuant to ~~G.S. 46-3.1.~~
G.S. 46A-28.

The provisions of G.S. 1-507.1 through 1-507.11 are applicable, as near as may be, to receivers appointed hereunder."

SECTION 7. G.S. 6-21 reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

...

(7) All costs and expenses incurred in special proceedings for the ~~division or sale of either real estate or personal property under the Chapter entitled Partition.~~
partition of real or personal property under Chapter 46A of the General Statutes, except that attorneys' fees shall be assessed in accordance with G.S. 46A-3.

...

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4."

PART III. OTHER CONFORMING CHANGES

SECTION 8. G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the ~~complaint, or petition, complaint or petition~~ of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the ~~complaint, complaint~~ or petition, within the time specified, the plaintiff will apply to the court for the relief demanded in the ~~complaint, complaint~~ or petition. The summons must run in the name of the State, ~~and~~ be dated and signed by the clerk, assistant ~~clerk~~ clerk, or deputy clerk of the superior court having jurisdiction in the special proceeding, ~~and~~ be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by ~~Rule 4(a) of the Rules of Civil Procedure. G.S. 1A-1, Rule 4(a).~~ The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service ~~shall be as is~~ as prescribed for summons in civil actions by ~~Rule 4 of the Rules of Civil Procedure. Provided, in~~ G.S. 1A-1, Rule 4. In partition proceedings under Chapter 46A of the General Statutes or where the defendant is an agency of the federal government, ~~or~~ an agency of the State, ~~or~~ a local government, or an agency of a local government, the time for filing an answer or other ~~plea shall be pleading is~~

within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 9. G.S. 1-502 reads as rewritten:

"§ 1-502. In what cases appointed.

A receiver may be ~~appointed~~ appointed in any of the following cases:

- (1) Before judgment, on the application of either party, when ~~he~~ the party establishes an apparent right to property ~~which that~~ is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being ~~lost,~~ lost or materially injured or impaired; ~~except a receiver, however, shall not be appointed~~ in cases where judgment upon failure to answer may be had on application to the court.
- (2) After judgment, to carry the judgment into effect.
- (3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply ~~his~~ the property in satisfaction of the judgment.
- (4) In cases provided in G.S. 1-507.1 and in ~~like~~ similar cases, ~~of the regarding~~ property within this State of foreign corporations.
- (5) In cases ~~wherein~~ where restitution is sought for violations of G.S. 75-1.1.
- (6) In cases involving partition of real property, pursuant to G.S. 46A-28.

The provisions of ~~G.S. 1-507.1 through 1-507.11~~ are ~~applicable, as near as may be, to receivers appointed hereunder.~~ Part 2 of Article 38 of Chapter 1 of the General Statutes apply to the appointment of a receiver of a corporation under this section."

SECTION 10. G.S. 6-21 reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding ~~which~~that may require the construction of any will or trust agreement, or fix the rights and duties of parties ~~thereunder; provided, that in~~under any will or trust agreement. In any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas ~~corpus; and the~~corpus. The court shall direct ~~what~~which officer shall tax the costs ~~thereof. of the proceeding.~~
- (4) In actions for divorce or ~~alimony; and the~~alimony. The court ~~may~~may, both before and after ~~judgment~~judgment, make ~~such~~any order respecting the payment of ~~such~~ costs as ~~may be~~ incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, ~~alteration~~alteration, or discontinuance of a public road, ~~cartway~~cartway, or ferry. The board of county commissioners ~~may order the costs incurred before them paid in their discretion. in its~~discretion may assess the costs incurred before the board.
- (6) The compensation of referees and commissioners to take depositions.
- (7) All costs and expenses incurred in special proceedings for the partition of real or personal property under Chapter 46A of the General Statutes, except that attorneys' fees shall be assessed in accordance with G.S. 46A-3.

(8) In all proceedings under ~~the Chapter entitled Drainage, Chapter 156 of the~~
General Statutes relating to drainage, except as therein—otherwise
~~provided.~~provided in that Chapter.

(9) ~~In proceedings for reallocation of homestead for increase in value, as provided~~
~~in the Chapter, Civil Procedure.~~

(10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding
children born out of wedlock.

(11) In custody proceedings under Chapter 50A of the General Statutes.

(12) In actions brought for misappropriation of a trade secret under Article 24 of
Chapter 66 of the General Statutes.

The word "costs" as ~~the same appears and is used in this section shall be construed to include~~
includes reasonable attorneys' fees in ~~such whatever~~ amounts as the court ~~shall~~ in its discretion
~~determine determines~~ and ~~allow: provided that attorneys' allows.~~ Attorneys' fees in actions for
~~alimony~~ alimony, however, shall not be included in the costs as provided ~~herein, in this section~~
but shall be determined and provided for in accordance with G.S. 50-16.4."

SECTION 11. G.S. 11-11 reads as rewritten:

"§ 11-11. Oaths of ~~sundry~~ various persons; forms.

The oaths of office to be taken by the ~~several persons hereafter named~~ persons listed in this
section shall be in the words following the names of ~~said the~~ persons respectively, in all cases
after taking the separate oath required by Article VI, Section 7 of the Constitution of North
Carolina:

...

Commissioners ~~Dividing and Allotting~~ Apportioning Real Estate

1 You and each of you swear (or affirm) that, in the partition of the real estate now about to be
2 made by you, you will do equal and impartial justice among the several claimants, according to
3 their several rights, and agreeably to law; so help you, God.

4 "

5 **SECTION 12.** G.S. 31A-6 reads as rewritten:

6 "**§ 31A-6. Survivorship property.**

7 (a) Where the slayer and the decedent hold property with right of survivorship as joint
8 tenants, joint owners, joint ~~obligees~~obligees, or otherwise, the following apply:

9 (1) The decedent's share passes immediately upon the decedent's death to the
10 decedent's estate.

11 (2) The slayer's share shall be held by the slayer for life and at the slayer's death
12 shall pass to the decedent's estate.

13 (b) Where three or more persons, including the slayer and the decedent, hold property
14 with right of survivorship as joint tenants, joint owners, joint ~~obligees~~obligees, or otherwise, the
15 following apply:

16 (1) The decedent's share is converted effective upon the decedent's death to that
17 of a tenant in common and passes to the decedent's estate.

18 (2) The remaining persons, including the slayer, continue to hold their shares with
19 right of survivorship.

20 (3) If the slayer becomes the final survivor, upon the slayer's death, the slayer's
21 share, which includes the other shares that passed to the slayer as the final
22 survivor, shall pass to the decedent's estate.

23 (c) During the slayer's lifetime, the slayer ~~shall have~~has the right to the income from the
24 slayer's share, subject to the rights of the slayer's creditors.

(d) Nothing in this section prohibits a partitioning of the property pursuant to ~~Chapter 46~~
Chapter 46A of the General Statutes or severing the joint tenancy in any manner provided by
law. Any share taken by the slayer by reason of partition or severance ~~shall be~~ is subject to
subdivision (3) of subsection (b) of this section."

SECTION 13. G.S. 39-13.5 reads as rewritten:

"§ 39-13.5. Creation of tenancy by entirety in actual partition of real property.

When either a husband or a wife owns an undivided interest in real property as a tenant in
common with some person or persons other than his or her spouse and there occurs an actual
partition of the property, a tenancy by the entirety may be created in the husband or wife who
owned the undivided interest and his or her spouse ~~in the manner hereinafter provided:~~ as follows:

(1) In a division by cross-deed or ~~deeds,~~ deeds between or among the tenants in
~~common provided that the~~ common. The intent of the tenant in common to
create a tenancy by the entirety with his or her spouse in this exchange of
deeds must be clearly stated in the granting clause of the deed or deeds to ~~such~~
the tenant in common and his or her spouse, and ~~further provided that the deed~~
or deeds to ~~such the~~ the tenant in common and his or her spouse ~~is~~ must be signed
by ~~such the~~ the tenant in common and ~~is~~ must be acknowledged before a certifying
officer in accordance with ~~G.S. 52-10;~~ G.S. 52-10.

(2) In a judicial proceeding for actual partition. In ~~such the~~ the proceeding, both
spouses have the right to become parties to the proceeding and to have their
pleadings state that the intent of the tenant in common is to create a tenancy
by the entirety with his or her spouse. The order of partition ~~shall~~ must provide
that the real property ~~assigned~~ apportioned to ~~such the~~ the tenant in common and
his or her spouse shall be owned by them as tenants by the entirety."

SECTION 14. Article 1 of Chapter 41 of the General Statutes is amended by adding
a new section to read:

"§ 41-11.2. Sale of standing timber; life estate.

If real property with standing timber is subject to a life estate, the life tenant or owner of the
remainder or reversionary interest may initiate a proceeding under Chapter 46A of the General
Statutes to sell the timber, separate from the real property, pursuant to G.S. 46A-80."

SECTION 15. G.S. 93A-43 reads as rewritten:

"§ 93A-43. Partition.

When a time share is owned by two or more persons as tenants in common or as joint ~~tenants~~
~~tenants~~, either may seek a partition by sale of that interest under Chapter 46A of the General
Statutes, but no purchaser of a time share ~~may shall~~ maintain ~~an action for partition by sale or in~~
~~kind a proceeding for partition, whether by actual partition or by partition sale~~, of the unit in
which ~~such the~~ time share is held."

SECTION 16. G.S. 136-96 reads as rewritten:

**"§ 136-96. Road or street not used within 15 years after dedication deemed abandoned;
declaration of withdrawal recorded; joint tenants or tenants in common; defunct
corporations.**

(a) Every strip, piece, or parcel of land ~~which shall have that has~~ been at any time
dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever,
by a deed, grant, map, plat, or other means, ~~which shall not have and that has not~~ been actually
opened and used by the public within 15 years ~~from and after the dedication thereof, shall be~~
~~thereby after its dedication is~~ conclusively presumed to have been abandoned by the public for
the purposes for which ~~same shall have been it was~~ dedicated; and no person shall have any ~~right,~~
~~right~~ or cause of action ~~thereafter, thereafter~~ to enforce any public or private easement ~~therein, in~~

1 ~~the land, except where such dedication was made less than 20 years prior to April 28, 1953, such~~
2 ~~right may be asserted within one year from and after April 28, 1953; provided, that no~~

3 (b) Notwithstanding subsection (a) of this section, no abandonment of any ~~such~~ public or
4 private right or easement shall be presumed until the dedicator or ~~some one or more of those a~~
5 person claiming under him shall file and cause the dedicator files or causes to be recorded in the
6 register's office of the county where ~~such the~~ land lies a declaration withdrawing ~~such the~~ strip,
7 ~~piece-piece,~~ or parcel of land from the public or private use to which it ~~shall have theretofore~~
8 ~~been dedicated in the manner aforesaid; provided further, that where~~ was dedicated.

9 (c) When the fee simple title is vested in tenants in common or joint tenants of any land
10 embraced within the boundaries of ~~any such a~~ road, highway, street, ~~avenue-avenue,~~ or other land
11 dedicated for any public purpose whatsoever, as described in this section, any one or more of
12 ~~such tenants, the cotenants, on his own or their the cotenant's~~ behalf and on ~~the~~ behalf of the
13 ~~others of such tenants, other cotenants,~~ may execute and cause to be registered in the office of
14 the register of deeds of the county where ~~such the~~ land is situated the declaration of withdrawal
15 provided for in this section, ~~and, under section. Under Chapter 46 of the General Statutes of North~~
16 ~~Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North~~
17 ~~Carolina, known as the "Judicial Sales Act," Chapter 46A (Partition) of the General Statutes and~~
18 Article 29A (Judicial Sales) of Chapter 1 of the General Statutes, and on petition of any one or
19 more of ~~such tenants such land the cotenants, the land~~ thereafter may be partitioned by sale only
20 as between or among ~~such tenants, and the cotenants,~~ irrespective of **who** may be in actual
21 possession of ~~such land, provided further, that in such partition proceedings any such tenants in~~
22 ~~common or joint tenants the land. In the partition proceeding, any cotenant may object to such~~
23 the withdrawal certificate and the court shall thereupon order the ~~same~~ certificate cancelled of
24 ~~record; record.~~

(d) ~~that where~~ When any corporation has dedicated any strip, ~~piece-piece,~~ or parcel of land in the manner ~~herein set out,~~ set out in this section, and ~~said the~~ dedicating corporation is ~~not now no longer~~ in existence, ~~it shall be conclusively presumed that the said corporation has~~ the corporation is conclusively presumed to have no further right, ~~title-title,~~ or interest in ~~said~~ strip, ~~piece, or parcel of the~~ land, regardless of the provisions of conveyances from ~~said the~~ corporation, or those holding under ~~said the~~ corporation, retaining title and interest in ~~said strip,~~ ~~piece, or parcel of land so dedicated; the the~~ land. The right, ~~title-title,~~ and interest in ~~said strip,~~ ~~piece, or parcel of the~~ land ~~shall be is~~ conclusively presumed to be vested in those ~~persons, firms~~ persons or ~~corporations~~ persons owning lots or parcels of land adjacent ~~thereto, to it,~~ subject to the provisions ~~set out herein before in of~~ this section.

(e) ~~The provisions of this section shall have no application in any case~~ This section does not apply in any of the following circumstances:

(1) ~~where~~ When the continued use of any strip of land dedicated for street or highway purposes ~~shall be is~~ necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of ~~such the~~ street or highway. ~~This section shall apply to dedications made after as well as before April 28, 1953.~~

(2) ~~The provisions of this section shall not apply when~~ When the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated."

**PART IV. TECHNICAL, CONFORMING, AND MODERNIZING AMENDMENTS TO
THE ELECTIVE LIFE ESTATE STATUTE**

SECTION 17. G.S. 29-30 reads as rewritten:

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) ~~In~~ Except as provided in this subsection, in lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share ~~shall be~~ is entitled to take as the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during ~~coverture, except that real estate as to which the surviving spouse;~~ coverture. The surviving spouse is not entitled to take a life estate in any of the following circumstances:

(1) ~~Has~~ The surviving spouse has waived the surviving spouse's rights by joining with the other spouse in a conveyance ~~thereof, or~~ of the real estate.

(1a) The surviving spouse has waived the right to take a life estate in lieu of an intestate or elective share by an express written waiver.

(2) ~~Has released or quitclaimed~~ The surviving spouse has waived, released, or conveyed the surviving spouse's interest ~~therein~~ in the real estate in accordance with ~~G.S. 52-10, or~~ G.S. 52-10.

(3) ~~Was~~ The surviving spouse was not required by law to join in a conveyance thereof of the real estate in order to bar the elective life ~~estate, or~~ estate.

(3a) The surviving spouse has executed a written declaration permitting the deceased spouse to convey or encumber the real estate without the consent or joinder of the surviving spouse.

(3b) The real estate in which the deceased spouse had an interest was either apportioned to or sold to another person in a partition proceeding initiated before the deceased spouse's death.

(4) ~~Is~~The surviving spouse is otherwise not legally entitled to the election provided in this section.

(b) The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if ~~such the~~ dwelling house ~~were~~was owned by the deceased spouse at the time of the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) of this section shall be made by the filing of a petition in accordance with Article 2 of Chapter 28A of the General Statutes (i) with the clerk of the superior court of the county in which the administration of the estate is pending, ~~or,~~ or (ii) if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be ~~commenced~~commenced, together with the recording of a notice indicating the county and file number of the clerk's filing with the register of deeds in every county where real property to be claimed under the filing is located. The election shall be made prior to the ~~shorter of the~~ following applicable periods:

- 1 (1) In case of testacy, the shorter of (i) within 12 months of the date of death of
2 the deceased spouse if letters testamentary are not issued within that period,
3 or (ii) within one month after the expiration of the time limit for filing a claim
4 for elective share if letters have been issued.
- 5 (2) In case of intestacy, the shorter of (i) within 12 months after the date of death
6 of the deceased spouse if letters of administration are not issued within that
7 period, or (ii) within one month after the expiration of the time limit for filing
8 claims against the estate, if letters have been issued.
- 9 (3) Repealed by Session Laws 2011-344, s. 5, effective January 1, 2012.
- 10 (4) If litigation that affects the share of the surviving spouse in the estate is
11 pending, including a pending petition for determination of an elective share,
12 then within such reasonable time as may be allowed by written order of the
13 clerk of the superior court.
- 14 ~~(5)~~ Nothing in this subsection ~~shall extend~~ extends the period of time for a surviving
15 spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.
- 16 (c1) The petition ~~shall~~ shall do all of the following:
- 17 (1) Be directed to the clerk with whom ~~filed~~ filed.
- 18 (2) State that the surviving spouse making the ~~same~~ petition elects to take under
19 this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1,
20 as ~~applicable~~ applicable.
- 21 (3) Set forth the names of all heirs, devisees, personal representatives and all other
22 persons in possession of or claiming an estate or an interest in the property
23 described in subsection ~~(a); and~~ (a) of this section.
- 24 (4) Request the allotment of the life estate provided for in subsection ~~(a)-(a)~~ of
25 this section.

(c2) The petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the petition may be executed and filed by a guardian ad litem appointed by the clerk. The petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the petition shall be served upon each of the interested persons named in the petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3.3(a)~~, 30-3.1, the clerk of superior court, with whom the petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) of this section and make a final report of ~~such this~~ action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings ~~under Chapter 46 of the General Statutes shall apply~~ except insofar as the ~~same rules~~ would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section ~~shall be~~ are subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived the surviving spouse's rights by joining with the other spouse in the making ~~thereof; or~~ thereof.

(2) By a ~~purchase money~~ mortgage or deed of ~~trust, trust given by the deceased spouse to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, or by~~ a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the ~~marriage; or~~ marriage.

(3) By a mortgage or deed of trust made prior to the ~~marriage; or~~ marriage.

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(5) By a mortgage or deed of trust on property with respect to which the elective life estate provided for in this section does not apply as provided in subsection (a) of this section.

(h) If no election is made in the manner and within the time provided for in subsection (c) of this section, the surviving spouse shall be conclusively deemed to have waived the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

PART V. EFFECTIVE DATE

- 1 **SECTION 18.** This act becomes effective October 1, 2020. Parts I and II of this act
- 2 apply to partition proceedings commenced on or after that date.